IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO.749 OF 2007

Asif Khan Bashir Khan .... Appellant
Vs.
The State of Maharashtra .... Respondent

Shri Mubin H. Solkar for the Appellant.

Sarvasri Raja Thakare with A.M. Chimalkar, Spl.P.P. with Ms A.S. Pai, A.P.P., for the State.

CORAM: R.M.S. KHANDEPARKAR &
Smt. V.K. TAHILRAMANI, JJ.

DATED: OCTOBER 16, 2007

ORAL ORDER (Per R.M.S.Khandeparkar, J.):

1. Heard. The petitioner herein challenges the proceedings under the Maharashtra Control of Organised Crime Act, 1999 (hereinafter called as "the MCOC Act") against the petitioner on the ground that there is no valid sanction granted for initiating such proceedings in as much as that the sanction granted by the competent authority apparently discloses total non-application of mind as it refers to two chargesheets against the petitioner being the basis for grant of the sanction when, in fact, at no point of time two chargesheets were filed against the petitioner during the preceding period of ten years. Drawing our attention to Section 2(1)(d), (e) & (f) of the MCOC Act and placing reliance in the decision in the matter of **Mr. Bharat Shantilal Shah v.**

State of Maharashtra, reported in 2003 All M.R. (Cri.) 1061, **Sherbahadur Akram Khan & Ors. v. State of Maharashtra,** reported in 2007 (1) Bom.C.R. (Cri.) 26 and **Jaisingh Asharfilal Yadav & Ors. v. State of Maharashtra & Anr.,** reported in 2003 All M.R. (Cri.) 1506, the learned Advocate for the petitioner submitted that the para 6 of the sanction dated 25-11-2006 apparently discloses that the sanctioning authority, on the assumption that there are two chargesheets filed against the petitioner within the preceding period of ten years, has proceeded to grant the sanction when the records nowhere disclose any such two chargesheets having been filed within the said period against the petitioner nor the respondent has been able to place on record any such two chargesheets against the petitioner for the relevant period. The learned counsel appearing for the respondent, on the other hand, drawing our attention to the decision in the matter of **Appa @ Prakash Haribhau Londhe v. State of Maharashtra & Anr.,** reported in 2006 (9) LJ Soft 68 = 2006 (3) Bom.L.R. 2617 = 2006 All M.R. (Cri.) 2804 = 2006 (2) Mah.L.J. (Cri.) 205 = 2007 Cri.L.J. 165, submitted that the requirement of law is that there has to be two chargesheets in relation to the offence punishable with three years' imprisonment during the preceding period of ten years against any member of an organised crime and the same aspect has been duly considered by the

sanctioning authority and that is apparent not only from the reading of para 6 but on taking into consideration all the facts referred to in the order of sanction by the sanctioning authority.

2. The relevant part of the order dated 25-11-2006, which is heavily relied upon by the learned Advocate for the petitioner to canvass his contention about the non-application of mind by the sanctioning authority, reads thus:

> "6. AND WHEREAS, in addition to the statement of the witnesses, from the recoveries of incriminating articles concerned in the commission of the bomb blasts at the instance of accused persons, the reports of the explosive experts, post mortem notes of the deceased, medical reports of the injured and other relevant reports, the voluntary confession statements made by some of the arrested accused persons before competent authority under the provisions of MCOC Act, 1999 and Test Identification Parades, I am convinced that there is sufficient evidence on record to prove the involvement of all

> the accused persons mentioned earlier in their continuing unlawful activities and in the commission of this organised crime, being the members of the Organised Crime Syndicate headed by Asif Khan Bashir Khan @ Junaid @ Abdullah and more than one charge sheet in cases with punishment of imprisonment for three years, have been filed against him before Competent Courts within the preceding period of ten years and the Courts have taken cognizance of the said charge-sheets."

3. Plain reading of the above para would disclose that the sanctioning authority after being convinced that there is sufficient evidence on record to prove the involvement of all the accused persons mentioned in the said sanctioning order in the continuing unlawful activity and in the commission of organised crime and the petitioner being one of the members of such organised crime syndicate and there being more than two chargesheets filed in the preceding period of ten years in respect of offences punishable with more than three years, the authority has granted sanction for initiating the proceedings under the MCOC Act. As rightly submitted by the learned Advocate for the respondent,

while considering whether the authority has applied its mind for granting the sanction, it is not sufficient to read only the concluding para by which the authority arrives at the conclusion about the involvement of the accused persons in the continuing unlawful activities and in the commission of organised crime in order to grant sanction for their prosecution under the MCOC Act, but it is necessary to consider the entire order itself. Having so considered, the order apparently discloses reference to various activities in which the members of the organised crime were involved and their continuing unlawful activities and after taking into consideration all these aspects, the sanctioning authority having found more than two chargesheets filed against the members of such organised crime in relation to the offences punishable with imprisonment for more than three years, has granted the sanction. Being so, there is absolutely no substance in the contention on behalf of the petitioner that the sanctioning authority does not disclose to have applied its mind before the grant of sanction.

4. The Division Bench of this Court in **Appa @ Prakash Haribhau Londhe's** case (supra) has clearly held that:

> "For the purpose of organised crime there has to be a continuing unlawful

> activity and there cannot be continuing unlawful activity unless at least two charge sheets are to be found to have been lodged in relation to the offence punishable with three years imprisonment during the period of ten years."

We are entirely in respectful agreement with the said observations by the Division Bench in Appa @ Prakash Haribhau Londhe's case.

5. The decision in **Jaisingh Asharfilal Yadav's** case (supra), and the para 19 thereof to which attention was drawn, was in relation to the arguments canvassed regarding the difference between the act or activity itself being termed or called as an offence under a statute and such act or activity being taken into consideration as one of the requisites for taking action under the statute. Considering the applicability of the law laid down by the Apex Court in **Rao Shiv Bahadur Singh v. The State of Vindhya Pradesh,** reported in AIR 1953 SC 394 as well as in **Sajjan Singh v. State of Punjab,** reported in AIR 1964 SC 464, while taking note of the decision in **The Queen Vs. St. Mary Whitechapel,** reported in (1848) 116 ER 811, it was held that for the purpose of organised crime there has to be a continuing unlawful activity, and it was observed that there cannot

be a continuing unlawful activity unless at least two chargesheets are to be found to have been lodged in relation to the offence punishable with three years imprisonment during the period of the preceding ten years. In fact, this observation is in consonance with the law laid down by the Division Bench of this Court in Appa @ Prakash Haribhau Londhe's case.

6. In **Bharat Shantilal Shah's** case (supra), attention was sought to be drawn to para 25 thereof to contend that the chargesheet has to be with reference to the persons and not with reference to the offence. The contention is devoid of substance. The decision in Bharat Shantilal Shah's case, and particularly in para 25 thereof, relates to the issue regarding the challenge to the provision of law on the ground of violation of Article 14 of the Constitution in as much as that it was sought to be contended that unequals were being treated as equals since the persons who were charged and convicted were treated on par with the persons who were charged and acquitted while considering the involvement of such person in the alleged continuing unlawful activity as a member of an organised crime. Attention was also drawn to the following observations in the said para 25:

"The activity must be continuing

> unlawful activity and to define it with clarity it is provided that any person who in the past was charge sheeted for more than one charge of such activity or crime the cognizance of which has been taken and imprisonment for which is more than three years should be taken into account. The fact of the person having been charge sheeted in such cognizable offences in the past makes the unlawful activity, continuing unlawful activity."

It is pertinent to note that the above observation was made with reference to the contention sought to be raised in relation to violation of Article 14 of the Constitution without considering the law pertaining to the definition regarding continuing unlawful activity and the organised crime, as also consideration of chargesheets referred to above in the said definition. It is well-settled law that the observations in a judgment cannot be read de hors the point which is sought to be raised and the facts in which such point is raised. The observations cannot by themselves form the ratio of the decision. The ratio of the decision is to be drawn after considering the facts of the case, the point which is sought to be raised in the matter, the arguments which are canvassed in support of the rival

contentions in relation to such point, the discussion made by the Court with reference to such point canvassed by the counsel for the parties and the ultimate decision arrived thereupon. On taking into consideration all these aspects, the ratio of the decision has to be gathered. Any sentence in a judgment cannot be read as a statutory provision and the law in that regard is well-settled by a catena of decisions of the Apex Court.

7. The decision in **Sherbahadur Akram Khan's** case (supra) and the para 10 to which attention was drawn therein and in particular the one sentence therefrom to which attention was drawn reads thus:

> "An activity would be termed as a continuing unlawful activity if more than one charge-sheet has been filed before the competent Court against the members of the gang either individually or jointly within the preceding ten years."

As already observed above, the sentence cannot be read disjunctively. Even otherwise, the same relates to the offences committed by the members of the organised crime and that is apparent from reading of the entire para 10 itself. The same relates to the discussion pertaining

to the definition of the term organised crime syndicate found in Section 2(f) of the MCOC Act. Undoubtedly, the opening of para 10 refers to all the three definitions comprised under Section 2(d), 2(e) and 2(f). However, the observation in the above quoted sentence is essentially with reference only to the continuing unlawful activity without taking into consideration the definition of the terms organised crime and organised crime syndicate found in Sections 2(e) and 2(f). Having so read, undoubtedly, it may appear as if referring to the persons against whom the chargesheet is filed. However, the chargesheet is essentially in relation to the offence committed in a matter. Merely because it relates to a particular person, once it is disclosed that such person is a member of the organised crime or organised crime syndicate and the offence is part of the continuing unlawful activity by either the organised crime or organised crime syndicate, it obviously would mean that the chargesheet refers to, as defined in Section 2(d), the offence committed as part of a continuing unlawful activity by organised crime or organised crime syndicate and the person being a member of such organised crime or organised crime syndicate, such chargesheet can definitely be taken into consideration for the purpose of application of MCOC Act against any such person. Being so, this decision is also of no help to the petitioner.

8. As no other ground is canvassed in the matter, the appeal fails and is hereby dismissed. The records and proceedings be returned forthwith.

(Smt.V.K.Tahilramani, J.) (R.M.S.Khandeparkar, J.)

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